

**MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING
TOWN HALL MEETING ROOM #1
May 4, 2005**

Present:

Jeffrey Kablik, Chairperson
Lucy Gertz, Vice Chairperson
Lori Capone, Director of Conservation

Henry Jungmann
Jeanne Zarba

Also in attendance:

Attorney Charles Zaroulis, Town Counsel
Joel Khan, Equity Alliance, Conservation Commission's financial consultant
Chris Mechalides, Zoning Board of Appeals
Richard Lemoine, Board of Selectmen
Kevin O'Connor, Board of Selectmen
Attorney Mark Bobrowski, Zoning Board of Appeals Attorney for 40B projects
Blair J. Finnegan, Applicant for Wynbrook
Davis Sears, Applicant for Wynbrook
Joe Peznola, Hancock Associates, Applicant's engineer

Meeting opened by Jeffrey Kablik, Chairperson

Chairperson Kablik opened the meeting by thanking everyone for attending and explained that we were here today to determine how the Conservation Commission is to interpret the pro-formas submitted for Wynbrook at Tyngsboro in relation to how these pro-forma were reviewed during the Zoning Board of Appeals process.

Selectmen O'Connor communicated that he and Selectmen Lemoine facilitated this meeting in order to answer the Conservation Commission's questions regarding the finances associated with Wynbrook at Tyngsboro and expressed his gratitude to Chairperson Kablik for holding this meeting so that this project may progress forward.

Atty. Bobrowski acknowledged that reading 310 CMR 10.58 was a real eye-opener for him, for he was unaware of the involvement the Conservation Commission has regarding finances involving projects within Riverfront Areas. He explained the financial parameters involved during the Zoning Board of Appeals process.

Chairperson Kablik asked Atty. Bobrowski whether land value used for the Zoning Board of Appeals pro-forma, based on an appraisal, was applicable to the Conservation Commission's review or whether the acquisition cost should be applied. Atty. Bobrowski agreed that the Zoning Board of Appeals pro-forma may not be relevant to the financial reviews under the Wetlands Protection Act.

Joel Khan, financial consultant for the Conservation Commission introduced himself and gave his background. Mr. Khan affirmed that the proforma used during the Zoning Board of Appeals process is not the benchmark in which the state reviews the finances as

set forth 310 CMR 10.58 (4)(c). The Wetlands Protection Act puts the onus on the developer to determine what alternatives may be available to minimize impacts to the Riverfront Area. The Commission has discretion when determining whether land value or actual acquisition costs are to be applied to leave the Commission leeway when determining how to mitigate for Riverfront Area impacts.

Attorney Zaroulis noted he was not an environmental lawyer but his understanding of 310 CMR 10.58 allows the applicant to rebut the presumptions set forth in 10.58(3).

Mr. Peznola affirmed that the applicant has not rebutted the interests of the Riverfront Area set forth in the Wetlands Protection Act.

Attorney Zaroulis inquired, for clarification, that the applicant will not be rebutting the presumptions set forth in the Act.

Mr. Peznola confirmed the presumptions will not be rebutted and the applicant is progressing onto the required alternatives analysis. Mr. Peznola stated that if the Commission makes the applicant use the actual acquisition cost instead of the appraised land value, the applicant will need to renegotiate with the Board of Selectmen and the Zoning Board of Appeals. Mr. Peznola agreed that it is up to the Conservation Commission to interpret the Act regarding land acquisition versus appraised value.

Joel Khan agreed it is up to the Conservation Commission's interpretation and they do not need to use the 40B evaluation criteria.

Chairman Kablik stated that if you use the appraised value, the percent profit is about 12%. If you use the actual acquisition cost, the percent profit is about 16%. Chairman Kablik asked the applicant to inquire as to whether the bank would allow a reduction in units if the actual expenditures would still be around 12%.

Henry Jungmann commented that he is not satisfied with the plan before us. The delineation is not accurate and not surveyed in the field.

Atty. Bobrowski commented that the Commission, when assessing the economic feasibility of this project, needs to determine whether they are satisfied that the project meets the Wetlands Protection Act, and whether the Riverfront Area impacts are mitigated for by the endowment of a Senior Center.

Selectmen O'Connor conveyed the need for the Board of Selectmen to be proactive with the developers to strike the best deal for the Town. The project started at 200 units, it is now down to 100 units. Elected leaders have an obligation to see amenities are followed through. Selectmen O'Connor asserted he has been hands off regarding this project and has never talked with any of the Conservation Commissioners regarding this project. Selectmen O'Connor declared he stands for wetlands and open space.

Vice Chairperson Gertz expressed the need for Director Capone to be satisfied that the delineation of all resource areas is accurately field surveyed. She also emphasized her apprehension about allowing approximately 100,000 square feet of disturbance to the Riverfront Area without a wildlife evaluation study being performed. Henry Jungmann agreed.

Selectman Lemoine verbalized that he was comfortable with the Zoning Board of Appeals process and wanted to inform the Commission that this project would also create \$500,000 in new tax revenues.

Chairman Kablik summarized the meeting by confirming the Riverfront Area concerns will be addressed and expressed that negotiations made with the Town would be considered as we review the project. Chairman Kablik stated that in the future it would be more productive if projects of this magnitude were a collaborative effort from the beginning. Chairman Kablik requested the applicant provide the Commission with a formal response to the Commission's letter, dated April 25, 2005. Chairman Kablik asked Mr. Khan to ascertain a threshold where the project is economically feasible while still substantially in compliance with the Zoning Board of Appeals' decision.

Joel Khan requested the applicant provide him with a plan of the proposed development once the riverfront impacts are adequately resolved, the appraisal performed by *Zarbo*, with an explanation on how the appraisal was performed, the proformas submitted to the Conservation Commission, and the financial analysis performed by Mike Jacobs, of MHJ Associates for the Zoning Board of Appeals. Applicants agreed to provide requested information.

Chairman Kablik adjourned meeting

Immediately following the meeting, Selectmen O'Connor requested Chairman Kablik meet with him in his office.

Minutes submitted by Lori Capone, Director of Conservation